IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6473 of 2007()

CRMP.2689/2006 of ADDL.DISTRICT COURT-I,MAVELIKKARA
CRIME NO.142 OF 2006 OF NOORANAD POLICE STATION

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PETITIONERS : A2, 3 AND 4

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1. JOY, S/O.KUNJAPPY, AGED 35,
   THANAPARAMBIL,PEROORKARAZHMA MURI, THAMARAKKULA
   VILLAGE, MAVELIKARA TALUK.

2. SATHEESH KUMAR @ BABU AGED 26 YEARS,
   S/O.SIVANANDAN, KANNANKUZHY MURI.
   THAMARAKKULA VILLAGE, MAVELIKARA TALUK.

3. VIJAYAKUMAR @ KUMAR, AGED 32 YEARS,
   KUMAR BHAVANAM, VEDARAPLAVU MURI,
   THAMARAKKULA VILLAGE, MAVELIKARA TALUK.

BY ADV. SRI.R.PADMAKUMAR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6473 of 2007

Dated this the 24th day of October, 2007

ORDER

Application for anticipatory bail. There is no representation for the petitioners. The petitioners face indictment in a prosecution under Section 308 I.P.C. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. The petitioners have not appeared before the learned Magistrate. The learned Magistrate has issued coercive processes to secure the presence of the petitioners. The petitioners apprehend imminent arrest.

2. It is averred that the petitioners are absolutely innocent. Their absence earlier was not wilful. The allegations are totally incorrect. The petitioners are willing to surrender before the learned Magistrate and seek regular bail. They apprehend that they may be arrested and humiliated by the police. In these circumstances, it is prayed that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioners.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends

arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-